



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5630-N-13]

Rental Assistance Demonstration: Revised RAD Notice

AGENCY: Office of the Assistant Secretary for Public and Indian Housing and Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice

SUMMARY: The Rental Assistance Demonstration (RAD) provides the opportunity to facilitate the conversion of assistance of public housing properties and other HUD-assisted properties to long-term, project-based Section 8 rental assistance. This Federal Register notice announces the posting of the fourth revision to the RAD notice (Revised RAD Notice Revision 4, PIH-2019-23 (HA)/H-2019-09, REV-4) and solicits public comment on changed eligibility and selection criteria. As provided by the RAD Statute, this notice addresses the requirement that RAD may proceed after publication of notice of its terms in the Federal Register. This notice summarizes the key changes made in the Revised RAD Notice. This notice also meets the RAD Statute requirement to publish waivers and alternative requirements at least 10 days before effect, while this does not prevent the demonstration, as modified, from proceeding immediately.

DATES: Comment Due Date: [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

Effective Dates: The Revised RAD Notice, PIH-2019-23 (HA)/H-2019-09, REV-4, other than those items listed as subject to notice and comment or new statutory or regulatory waivers or alternative requirements specified in this notice, is effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

The new statutory and regulatory waivers and alternative requirements are effective [INSERT DATE 10 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

The items listed as subject to notice and comment will be effective upon [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. If HUD receives adverse comment that leads to reconsideration, HUD will notify the public in a new notice immediately upon the expiration of the comment period.

ADDRESSES: Interested persons are invited to submit comments electronically to rad@hud.gov no later than the comment due date.

FOR FURTHER INFORMATION CONTACT: To assure a timely response, please direct requests for further information electronically to the email address rad@hud.gov. Written requests may also be directed to the following address: Office of Recapitalization, Office of Housing; Department of Housing and Urban Development; 451 7th Street SW, Room 2000; Washington, DC 20410.

SUPPLEMENTARY INFORMATION:

I. Background

Originally authorized by the Consolidated and Further Continuing Appropriations Act, 2012 (Pub. L. 122-55, signed November 18, 2011) (2012 Appropriations Act), RAD allows for the conversion of assistance of public housing properties, Rent Supplement (Rent Supp), Rental Assistance (RAP), Moderate Rehabilitation (Mod Rehab), Mod Rehab Single Room Occupancy (SRO), and Section 202 Project Rental Assistance Contract (202 PRAC) programs (collectively,

“covered programs”) to long-term, renewable assistance under Section 8.¹ The most recent version of the RAD notice is PIH-2019-23 (HA)/H-2019-09, REV-4, located at https://www.hud.gov/sites/documents/RAD_Notice_Rev3_Final.docx.

II. Key Changes made to RAD

The following highlights key changes to RAD that are included in the Revised RAD Notice:

First Component (Public Housing Conversions):

1. Extends all resident rights to households that will reside in non-RAD Project Based Voucher (PBV) units placed in a Covered Project so as to facilitate the standard protection or residents (see section 1.6);
2. Increases resident notice requirements to ensure adequate communication with residents throughout the conversion process (see Section 1.8);
3. Establishes a mechanism for public housing agencies (PHAs) to enter into partnerships in order to pool resources or capacity with each other so as to effectively convert properties through RAD (see Section 1.5.A.M);
4. Allows limited rent increases for public housing conversions to Project Based Rental Assistance (PBRA) contracts in certain scenarios, including in designated Opportunity Zones (see Section 1.7.A.5);

¹ The RAD statutory requirements were amended by the Consolidated Appropriations Act, 2014 (Pub. L. 113–76, signed January 17, 2014), the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113–235, signed December 16, 2014), the Consolidated Appropriations Act, 2016 (Pub. L. 114–113, signed December 18, 2015), the Consolidated Appropriations Act, 2017 (Pub. L. 115–31, signed May 4, 2017), and the Consolidated Appropriations Act, 2018 (Pub. L. 115–141, signed March 23, 2018). The statutory provisions of the 2012 Appropriations Act pertaining to RAD, as amended, are referred to as the RAD Statute in this notice.

5. Modifies the requirements for portfolio awards so as to provide PHAs greater flexibility in staging the conversion of their properties (see Section 1.9.C);

6. Streamlines Capital Needs Assessment (CNA) requirements to eliminate the submission of the CNA Tool when certain conditions have been met (see Section 1.5.A);

7. Introduces a “Concept Call” so that PHAs can receive confirmation that project plans are sufficiently advanced to submit a Financing Plan (see Section 1.12.C);

8. Prohibits PHAs from entering debt into the Earned Income Verification “Debts Owed” module purely as a result of the End of Participations Form HUD-50058 that is required to be submitted into Public and Indian Housing Information Center (PIC) as part of the conversion (see Section 1.13.B);

9. Broadens the use of “tiered” environmental reviews so that streamlined submissions are needed for certain 24 CFR Part 50 reviews; requires the use of the HUD Environmental Review Online System (HEROS) for Part 50 reviews; and requires radon testing for PBRA and PBV conversions (see Attachment 1A);

10. Establishes policy that RAD rents will be updated every two years and the updated rents will be applied to new awards issued after those established dates (see Attachment 1C);

11. Establishes a priority for “Section 3” employment and other economic opportunities for residents of public housing or Section 8 assisted housing (see Section 1.4.A.15).

Second Component (202 PRAC, Mod Rehab, Mod Rehab SRO, Rent Supp, RAP Conversions):

1. Implements the provision of the 2018 Consolidated Appropriations Act authorizing the conversion of 202 PRAC projects to Section 8 PBRA or PBV contracts;

2. Streamlines Capital Needs Assessment (CNA) requirements for Mod Rehab conversion to eliminate the submission of the CNA Tool when certain conditions have been met;

3. Broadens the use of “tiered” environmental reviews so that streamlined submissions are needed for certain Part 50 reviews; requires the use of the HUD Environmental Review Online System (HEROS) for Part 50 reviews; and requires radon testing for PBRA and PBV conversions

4. Provides an ability for owners of converting SRO properties serving the homeless to establish a preference that facilitates permanent supportive housing;

5. Fully establishes resident right of return and the prohibition against re-screening for existing residents; and

6. Establishes a final date that any remaining RAP properties may make a submission of conversion under RAD.

7. Clarifies the requirements with respect to Section 8 PBRA/PBV and the Davis-Bacon Act of 1931 by stating that execution of a Section 8 PBRA or PBV contract through RAD that provides rental assistance to previously assisted units does not trigger Davis-Bacon prevailing wage requirements (prevailing wages, the Contract Work Hours and Safety Standards Act, and implementing regulations, rules, and requirements). However, to the extent that construction or rehabilitation is performed on nine or more units that will be newly assisted as a result of the conversion transaction (including, without limitation, through transfer of assistance), such construction or rehabilitation is subject to Davis-Bacon prevailing wage requirements. For more information, see section VI of this notice, below.

III. Changes Subject to Notice and Comment

The Revised RAD Notice makes changes to some of the selection and eligibility criteria for conversions of public housing under the First Component. Pursuant to the RAD Statute, these changes must be made available for public comment before they are effective. Please submit all

comments to rad@hud.gov. As indicated above, the following changes will be effective on **[insert date that is 30 days after date of publication in the FEDERAL REGISTER]**. If HUD receives adverse comments that lead to reconsideration, HUD will notify the public in a new notice immediately upon the expiration of the comment period.

The changes subject to notice and comment are:

1. Removing restrictions on certain HOPE VI properties that are under 10 years old; and
2. Eliminating the selection of applications based on previously established “Priority Categories” so that HUD reviews applications on a first-come, first serve basis. In the event that a waiting list forms, establishes the priority selection of applications for properties located in designated Opportunity Zones.

IV. New Waivers and Alternative Requirements

The RAD Statute provides that waivers and alternative requirements authorized under the First Component must be published by notice in the Federal Register no later than 10 days before the effective date of such notice. HUD has previously published its waivers and alternative requirements for RAD, on July 26, 2012 (77 FR 43850), July 2, 2013 (78 FR 39759), June 26, 2015 (80 FR 36830), and January 19, 2017 (82 FR 6615).

So as to facilitate the uniform treatment of residents and units at a Covered Project, this notice subjects any non-RAD PBV units located in the Covered Project to certain waivers and alternative requirements applicable to RAD units, including:

1. Site selection – Compliance with PBV Goals. Provision Affected: section 8(o)(13)(C)(ii) of the United States Housing Act of 1937 (the Act), 24 CFR § 983.57(b)(1) and (c)(2). Waiver: HUD waives these provisions having to do with deconcentration of poverty and expanding housing and economic opportunity for the existing site.

2. Phase-in of Tenant Rent Increases. Provision Affected: section 3(a)(1) of the Act, 24 CFR § 983.3. Alternative Requirement: HUD is specifying alternative requirements to allow for the phase-in of tenant rent increases caused purely as a result of conversion.

3. Resident Procedural Rights. Provision Affected: 24 CFR § 983.257, 24 CFR § 982.555(b). Alternative Requirement: HUD is specifying alternative requirements to require that PHAs provide adequate written notice of termination of the lease and establish a grievance process.

4. Earned Income Disregard (EID). Provision affected: 24 CFR § 5.617(b). Waiver and Alternative Requirement: HUD is waiving this provision and allowing all tenants who are employed and currently receiving EID at the time of conversion to continue to benefit from this exclusion from income as a resident in the PBV project. EID will apply to residents in a PBV project with assistance converted under RAD regardless of the resident's disability status.

5. When Total Tenant Payment Exceeds Gross Rent. Provision affected: 24 CFR § 983.53(c), 24 CFR § 983.258. Waiver and Alternative Requirement: HUD is waiving both of these provisions and requiring that the unit for current residents in the converting project be placed on and/or remain under the non-RAD PBV HAP Contract in the covered project when the family's TTP equals or exceeds the Gross Rent. Further, HUD is establishing the alternative requirement that until such time that the family's TTP falls below the gross rent, the rent to the owner for the unit will equal the lesser of (a) the family's TTP, less the Utility Allowance, or (b) any applicable maximum rent under LIHTC regulations. During any period when the family's TTP falls below the gross rent, normal PBV rules shall apply.

6. Under-Occupied Unit. Provision affected: 24 CFR § 983.260. Waiver: HUD is waiving this provision in order to allow the family to remain in the under-occupied unit until an appropriate-sized unit becomes available in the Covered Project.

7. Establishment of a Waiting List. Provision affected: 24 CFR § 983.251(c)(2). Alternative Requirement: HUD is specifying an alternative requirement in order to ensure that applicants on the PHA's community wide public housing waiting list have been offered placement on a Covered Project's site-based PBV waiting list.

In addition, this notice announces two other waivers and alternative requirements:

1. Jobs Plus. Provision affected: Jobs Plus provisions in the "Public Housing Capital Fund" of Consolidated Appropriations Act, 2014 (Public Law 113-76) or future appropriations acts. Waiver and Alternative Requirement: HUD is waiving the provision in the appropriation acts for FY14 and future years that limits Jobs Plus funds to provide grants to help public housing residents obtain employment and increase earnings. This waiver is necessary for the continued administration of the Jobs Plus grant at a target project after conversion. Jobs Plus grantees awarded FY14 and future funds that convert the Jobs Plus target projects(s) under RAD will be able to finish out their Jobs Plus period of performance unless significant relocation and/or change in building occupancy is planned. However, Jobs Plus target public housing projects must enroll public housing residents into the Jobs Plus rent incentive, JPEID, prior to conversion. Any resident of the Covered Project that had not enrolled prior to conversion is not eligible to enroll in JPEID but may utilize Jobs Plus services that predominantly benefit the former public housing residents who resided at the target project at the time of RAD conversion.

2. Relocation requirements under Section 18 of the Act. Provision affected: sections 18(a)(4) and 18(g) of the Act and 24 CFR 970.21. Waiver and Alternative Requirement: Where a

PHA is combining the use of RAD and Section 18 at a project, HUD is waiving the relocation requirements governing Section 18 and applying the RAD relocation requirements to affected residents.

V. Revised RAD Notice Availability

The Revised RAD Notice (PIH-2019-23 (HA)/H-2019-09, REV-4) can be found on RAD's website, www.hud.gov/RAD.

VI. Impact on 2015 Davis-Bacon Notice

On March 9, 2015 at 80 FR 12511 (the "March 9, 2015 Notice"), HUD published a notice in the Federal Register with details on how the Davis-Bacon requirements interact with the PBV program. The notice particularly addressed the applicability of Davis-Bacon requirements to projects selected as "existing housing"² under the PBV program, including PBV existing housing under the second component of RAD (sometimes referred to as "RAD 2"), which was covered in section II.C.

HUD's General Counsel issued a legal opinion on August 13, 2019 (the "2019 Opinion"), concluding that Davis-Bacon requirements are not triggered by the rehabilitation of previously assisted units occurring in connection with a conversion of assistance under the second component of RAD. The 2019 Opinion superseded a 2014 opinion (the "2014 Opinion") from the Office of General Counsel regarding the applicability of Davis-Bacon wage rates to PBV existing housing under RAD 2. The 2019 Opinion noted that the 2014 Opinion did not give proper consideration to statutory text and was a departure from longstanding HUD interpretation and practice. The 2019 Opinion concluded that rehabilitation of already-assisted units and

² Existing housing is defined in 24 CFR§ 983.3.

associated common areas that occur in connection with PBV and PBRA provided under RAD 2 does not constitute “development” of a new Section 8 project that would trigger the application of Davis-Bacon requirements under section 12(a) of the United States Housing Act of 1937. Instead, RAD 2 transactions in which the assisted units remain the same as those under the prior form of project-based assistance constitute a mere extension of existing assistance. The 2019 Opinion also noted that to the extent that construction or rehabilitation is performed on nine or more units that will be newly assisted with PBVs or PBRA under RAD 2 (including through transfer of assistance), this work would constitute development of an expanded project that would trigger the application of Davis-Bacon to the same extent that it would apply to the non-RAD provision of PBVs or PBRA to projects that include units not assisted under a previous contract. Accordingly, section II.C. of the March 9, 2015 Notice is withdrawn. The guidance in the remainder of the March 9, 2015 Notice remains applicable to the rehabilitation of nine or more newly assisted existing units under RAD 2.

VII. Environmental Review

A Finding of No Significant Impact with respect to the environment has been completed in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding is available for public inspection during regular business hours in the Regulations Division, Office of General Counsel; Department of Housing and Urban Development; 451 7th Street SW, Room 10276; Washington, DC 20410– 0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the Finding by calling the Regulations Division at

202-402-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800-877-8339.

Dated: October 4, 2019.

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Assistant Secretary for Public and Indian Housing.

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